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| COMPLIANCE BOARD OPINION NO. 01-13 |
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June 28, 2001

Mr. Chad W. Fornwalt

The Open Meetings Compliance Board has considered your complaint that the Allegany County Commissioners have violated the Open Meetings Act at weekly meetings held regularly on Tuesday mornings. The Commissioners have denied that these meetings violated the Act. They have indicated, however, that, in furtherance of the concept of open government, they will dispense with these meetings and instead hold Thursday morning work sessions that will be open to the public.

For the reasons stated below, the Compliance Board is unable to state an opinion concerning the legality of the Tuesday morning sessions. The Compliance Board commends the County Commissioners for eliminating any future issues about the closed meetings by initiating open meetings in their stead.

I

Complaint and Response

Your complaint concerned meetings of the Board of County Commissioners of Allegany County that had been held each Tuesday at 9:30 a.m. Your complaint indicated that “no notification is ever given to the public, nor are the items discussed ever disclosed in public session. In fact, [the Commissioners] never vote to go into closed session, as is set out in the Open Meetings Act.” In general, your complaint noted, the Tuesday morning sessions are conducted without compliance with any of the Act’s procedural requirements.

In a timely response on behalf of the Board of County Commissioners, William M. Rudd, Esquire, County Attorney, denied that the Act had been violated. The response pointed out that Allegany County has adopted the code home rule form of government set out in Article 25B of the Maryland Code. Under this form of government, “the County Commissioners are constitutionally and legally obligated to exercise an executive function or to oversee the executive function of county government.” Although the County Administrator oversees the day-to-day

operations of county government, the County Commissioners retain ultimate executive authority.

The Tuesday morning sessions, according to the response, were “meetings in which the County Commissioners exercise an executive function ...” and, therefore, are excluded from the coverage of the Open Meetings Act. At these sessions, “the three Commissioners, along with the County Administrator and the County Attorney, meet with various department heads who brief the County Commissioners concerning on-going projects. The meetings have also been used for budget formulation.” In addition, the meetings were used for the purpose of coordinating the schedules of the Commissioners at various functions in the county. Finally, “at the Tuesday morning meetings, the County Administrator provides each Commissioner with a proposed agenda for the Thursday public meeting. No action is taken upon the agenda. However, the Administrator may ask if any Commissioner wishes to add any matters to the agenda. That agenda is then distributed to the press immediately following the meeting.”

Although maintaining the position that the Tuesday morning meetings did not violate the Act, because the executive function exclusion meant that the Act did not apply, Mr. Rudd’s response noted the County Commissioners’ “commitment to the concept of open government. To that end, they have agreed to dispense with the Tuesday morning staff meetings and hold Thursday morning work sessions that will be open to the public. These work sessions will be used for the same purpose as the previous Tuesday morning meetings. In addition, these meetings can allow for the Commissioners to discuss and debate possible policy or legislation in response to briefings provided by department heads and others. Any decisions to close such meetings either for those reasons established in the Open Meetings Act (such as personnel matters) or to carry out any purely executive function, will be discussed and voted upon in public.”

II

Discussion

The question whether the Tuesday morning meetings were excluded from the coverage of the Open Meetings Act by the “executive function” exclusion is a complicated one. In general, it is likely that some matters discussed at the Tuesday sessions (for example, the coordination of the Commissioners’ schedules) did indeed fall within the exclusion for executive functions. Other matters, however (for

example, a briefing by a department head about the need for a change in law or policy) would have been covered by the Act, not excluded from it. In an opinion recently issued concerning comparable meetings of the Carroll County Commissioners, we explored the complexity of this issue at some length. Compliance Board Opinion 01-7 (May 8, 2001).

We shall neither repeat that analysis here nor attempt to apply it to the meetings of the Board of County Commissioners of Allegany County for two reasons: First, the response of the County Commissioners does not provide enough detail to enable us to reach a conclusion. Second, in light of the commendable decision by the County Commissioners to adopt an open-session format for these staff briefings, in lieu of the former closed sessions, a specific analysis of the Tuesday morning meetings would be moot and therefore pointless.

III

Conclusion

We express no opinion about the legality of the former practice of the County Commissioners of holding closed staff briefings each Tuesday morning. We commend the County Commissioners for their decision to abandon this practice and instead institute a practice of open sessions for these matters.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.

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